

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DARRYL LEE GOLDSTEIN,

Plaintiff,

v.

OFFICER PAUGH, et al.,

Defendants.

No. C 03-1557 SBA (pr)

**ORDER (1) DENYING MOTION FOR
TRO AS MOOT; (2) DENYING
MOTION TO STRIKE; (3) DENYING
REQUEST FOR CASE MANAGEMENT
CONFERENCE; AND (4) SETTING
BRIEFING SCHEDULE**

(Docket Nos. 30, 32, 36, 39)

Before the Court are four motions filed by Plaintiff in the above-referenced action, including: (1) two "Motions for Protective Orders" (docket nos. 32, 39); (2) a "Motion to Strike Objection/Opposition to Plaintiff's Request for Judicial Notice" (docket no. 36); and (3) a "Motion for Case Management Order" (docket no. 30). The Court will now address the merits of each motion.¹

I. Motions for Protective Orders/Temporary Restraining Orders

On June 17, 2005, Plaintiff filed a "Motion for Protective Order." On that same date, he filed a "Declaration of Darryl Lee Goldstein in Support of Motion for Protective Order." On June 27, 2005, Plaintiff filed another "Motion for Protective Order." On July 11, 2005, Plaintiff filed a "Declaration of Kevin L. Jones in Support of Plaintiff's Request for Protective Order" and an "Addendum to Request for Protective Order." It appears that both motions for protective orders are identical and ask for sweeping injunctive relief, which seek essentially the same relief as the motion for a temporary restraining order ("TRO"). Therefore, the Court will treat the two motions as one and will construe his motion for protective order as a motion for a TRO.

¹ As a preliminary matter, the Court notes that Plaintiff misspelled two of the defendants' names in this action. The correct spelling of their names are Officer Paugh and Officer Rothaus, respectively. See Answer at 1.

1 In his motion for a TRO, Plaintiff states that he was confined at San Mateo County Jail.
2 He alleges that the jail officials "subjected Plaintiff to extreme retaliation" based on Plaintiff
3 naming the County of San Mateo as a defendant in his civil rights complaint. (See Mot. for
4 Protect. Order dated Jun. 17, 2005 at 2 [citing Goldstein v. Ruth Ann Fleming, et al., Case No.
5 C 00-0598 SBA (pr)].) He claims that the jail officials have deprived him of law library access
6 for his civil and criminal cases. He also alleges that he was informed that his legal documents
7 would be removed from his jail cell. Plaintiff requests this Court to issue a protective order
8 directing Don Horsley, Sheriff of San Mateo County, to prevent jail staff from removing his
9 legal files from his present housing, from continuing to deny Plaintiff adequate access to the
10 law library for his criminal and civil cases, and from retaliatory cell searches. (Id. at 4.)

11 The Court notes that since he filed the motions for protective orders in June 2005,
12 Plaintiff has informed the Court that he has been transferred to San Quentin State Prison. The
13 transfer to a different prison is important because it makes much of his requested relief moot.

14 Accordingly, Plaintiff's motion for a TRO (docket nos. 32, 39) is DENIED as moot.

15 **II. Motion to Strike**

16 Plaintiff requests this Court to strike Defendants' Opposition to Plaintiff's Motion for
17 Judicial Notice. Defendants' opposition will not be stricken, and it will be afforded such weight
18 as it merits. Plaintiff may file a reply to Defendants' Opposition within **fifteen (15) days** of the
19 date of this Order, or may rest upon the objections stated in his motion to strike already filed.

20 Accordingly, Plaintiff's motion to strike (docket no. 36) is DENIED.

21 **III. Request for Case Management Conference**

22 Plaintiff has filed a "Request for Case Management Order," which the Court will construe
23 as a request for a Case Management Conference in this case. Defendants filed their Answer in
24 this case on January 18, 2006. Because a motion for summary judgment has yet to be filed in this
25 action, there is no need to conduct a case management conference at this time.

26 Accordingly, the Court DENIES Plaintiff's request for a case management conference
27 (docket no. 30).

28 **VI. Briefing Schedule**

1 In order to expedite the resolution of this case, the Court orders the following briefing
2 schedule:

3 No later than **sixty (60) days** from the date of this Order Defendants shall file a motion
4 for summary judgment or other dispositive motion. The motion shall be supported by adequate
5 factual documentation and shall conform in all respects to Federal Rule of Civil Procedure 56. If
6 Defendants are of the opinion that this case cannot be resolved by summary judgment, they shall
7 so inform the Court prior to the date the summary judgment motion is due. All papers filed with
8 the Court shall be promptly served on Plaintiff.

9 Plaintiff's opposition to the dispositive motion shall be filed with the Court and served on
10 Defendants no later than **forty-five (45) days** after the date on which Defendants' motion is filed.
11 The Ninth Circuit has held that the following notice should be given to pro se plaintiffs facing a
12 summary judgment motion:

13 The defendants have made a motion for summary judgment by which they
14 seek to have your case dismissed. A motion for summary judgment under Rule 56
of the Federal Rules of Civil Procedure will, if granted, end your case.

15 Rule 56 tells you what you must do in order to oppose a motion for
16 summary judgment. Generally, summary judgment must be granted when there is
17 no genuine issue of material fact -- that is, if there is no real dispute about any
fact that would affect the result of your case, the party who asked for summary
judgment is entitled to judgment as a matter of law, which will end your case.
18 When a party you are suing makes a motion for summary judgment that is
properly supported by declarations (or other sworn testimony), you cannot simply
19 rely on what your complaint says. Instead, you must set out specific facts in
declarations, depositions, answers to interrogatories, or authenticated documents,
as provided in Rule 56(e), that contradict the facts shown in [Defendants']
20 declarations and documents and show that there is a genuine issue of material fact
for trial. If you do not submit your own evidence in opposition, summary
21 judgment, if appropriate, may be entered against you. If summary judgment is
granted in favor of [Defendants], your case will be dismissed and there will be no
22 trial.

23 See Rand v. Rowland, 154 F.3d 952, 963 (9th Cir. 1998) (en banc).

24 Plaintiff is advised to read Rule 56 of the Federal Rules of Civil Procedure and Celotex
25 Corp. v. Catrett, 477 U.S. 317, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986) (party opposing
26 summary judgment must come forward with evidence showing triable issues of material fact on
27 every essential element of his claim). Plaintiff is cautioned that because he bears the burden of
28 proving his allegations in this case, he must be prepared to produce evidence in support of those

1 allegations when he files his opposition to Defendants' dispositive motion. Such evidence may
2 include sworn declarations from himself and other witnesses to the incident, and copies of
3 documents authenticated by sworn declaration. Plaintiff will not be able to avoid summary
4 judgment simply by repeating the allegations of his complaint.

5 If Defendants wish to file a reply brief, they shall do so no later than **fifteen (15) days**
6 after the date Plaintiff's opposition is filed.

7 The motion shall be deemed submitted as of the date the reply brief is due. No hearing
8 will be held on the motion unless the Court so orders at a later date.

9 Discovery may be taken in this action in accordance with the Federal Rules of Civil
10 Procedure. Leave of the Court pursuant to Rule 30(a)(2) is hereby granted to Defendants to
11 depose Plaintiff and any other necessary witnesses confined in prison.

12 All communications by Plaintiff with the Court must be served on Defendants' counsel by
13 mailing a true copy of the document to Defendants' counsel.

14 It is Plaintiff's responsibility to prosecute this case. Plaintiff must keep the Court
15 informed of any change of address and must comply with the Court's orders in a timely fashion.

16 Extensions of time are not favored, though reasonable extensions will be granted. Any
17 motion for an extension of time must be filed no later than **seven (7) days** prior to the deadline
18 sought to be extended.

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28 **CONCLUSION**

1. Plaintiff's motions for protective orders (docket nos. 32, 39), which were construed to be a single motion for a TRO, are DENIED as moot.

2. Plaintiff's motion to strike Defendants' opposition to Plaintiff's request for judicial notice (docket no. 36) is DENIED.

3. Plaintiff's request for a case management conference (docket no. 30) is DENIED.


4. The parties are directed to abide by the briefing schedule outlined above.

5. The Clerk of the Court is directed to make the necessary changes to the spelling of the names of Officer Pough and Officer Rothus, who are listed as two of the defendants in this action. The court file should reflect the correct spelling of their names as Officer Paugh and Officer Rothaus, respectively.

6. This Order terminates Docket Nos. 30, 32, 36, and 39.

IT IS SO ORDERED.

DATED: February 9, 2006


SAUNDRA BROWN ARMSTRONG
United States District Judge